

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

GERARDO HERRERA-GONZALEZ,	)	No. CV-F-02-5709 OWW
	)	(No. CR-F-98-5183 OWW)
)	
Petitioner,	)	ORDER DENYING PETITIONER'S
	)	MOTION FOR ORDER GRANTING
vs.	)	PERMISSION TO MODIFY GROUND
	)	FOUR AND TO FILE
	)	SUPPLEMENTAL POINTS AND
	)	AUTHORITIES (Doc. 225),
UNITED STATES OF AMERICA,	)	DIRECTING CLERK OF COURT TO
	)	CHANGE PETITIONER'S ADDRESS
	)	ON DOCKET AND SERVE
Respondent.	)	PETITIONER WITH DOCS. 220
	)	AND 221
)	

On June 11, 2002, petitioner Gerardo Herrera-Gonzalez filed a timely Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. Ground Four of the motion asserted that petitioner was denied the effective assistance of counsel because counsel "fail[ed] to object to the failure of the indictment to show all elements of the offense charged."

By Order filed on September 4, 2003, petitioner's motion for

1 relief with respect to Ground Four was denied. The United States
2 was ordered to respond to the other grounds for relief asserted
3 in the motion. (Doc. 208). By Order filed on June 15, 2004,
4 petitioner's Section 2255 motion was denied and judgment for
5 respondent was entered on June 16, 2004. Petitioner was served
6 by mail with the June 15, 2004 Order and the June 16, 2004
7 Judgment. However, service was returned with the notification
8 "return to sender - gone" on June 28, 2004. Petitioner did not
9 file a notice of change of address.

10 Service on petitioner was effective pursuant to Rule 83-
11 182(f), Local Rules of Practice.¹

12 On August 16, 2005, petitioner filed a "Motion for Order
13 Granting Permission to Modify Ground Four, and To File
14 Supplemental Memorandum of Points and Authorities." In this
15 motion, petitioner asserts: "[P]etitioner was at the BOP facility
16 in Lompoc, California when he filed his initial pleading.
17 Petitioner is presently at FCI Safford, in Safford, Arizona,
18 having been transferred here in April, 2004." Petitioner seeks

19 _____
20 ¹Rule 83-182(f), Local Rules of Practice, provides in
pertinent part:

21 Each ... party appearing in propria persona is
22 under a continuing duty to notify the Clerk
and all other parties of any change of address
23 or telephone number ... of the party if
appearing in propria persona. Absent such
24 notice, service of documents at the prior
address of the ... party shall be fully
25 effective. Separate notice shall be filed
with the Clerk and served on all parties in
26 each action wherein an appearance has been
made.

1 to amend Ground Four to read "United States v. Booker/Ameline III
2 render Petitioner's Sentence Void, Ab Initio."

3 The relief requested in petitioner's motion is futile and
4 does not change the conclusion in the September 4, 2003 Order.
5 The Supreme Court's decision in *United States v. Booker*, 543 U.S.
6 220 (2005), does not apply retroactively to cases on collateral
7 review. *United States v. Cruz*, 423 F.3d 1119 (9th Cir.2005),
8 *cert. denied*, ___ U.S. ___, 126 S.Ct. 1181 (2006). *United States*
9 *v. Ameline*, 409 F.3d 1073 (9th Cir.2005), has no application to
10 petitioner because *Ameline* is limited to cases on direct
11 appellate review that were pending when *Booker* was decided.

12 ACCORDINGLY, as set forth above:

13 1. Petitioner's "Motion for Order Granting Permission to
14 Modify Ground Four, and To File Supplemental Memorandum of Points
15 and Authorities" is DENIED.

16 2. The Clerk of the Court is directed to enter petitioner's
17 address on the docket:

18 Gerardo Herrera-Gonzalez
19 #58363-097
20 FCI Safford
P.O. Box 9000
Safford, AZ 85548

21 The Clerk of the Court is directed to serve Docs. 220 and 221 on
22 petitioner at this address.

23 IT IS SO ORDERED.

24 **Dated: November 9, 2006**
25 668554

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE